IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2055 OF 1998.

Arpan Leasing Company Limited
a company incorporated under the
provisions of the Companies Act,
1956 and having its registrered
office at Room No.58, Bombay Mutual
Chambers, Fifth floor, 19/21,
Ambalal Doshi Marg (Hamam Street),
Fort, Mumbai 400 023. ... Plaintiff.

Versus.

Vijay Sawant of Mumbai, Adult,
Indian Inhabitant, carrying on
business in the name and style of
M/s.Sadguru Arts as the sole
proprietor thereof at Mahatma Phule
Plot, Near Mahatma Phule Tech.
School, Jerbai Wadia Road, Parel,
Mumbai 400 012. ... Defendant.

Ms.Rashmi Vaithy i/by M/s.S.Ashwinikumar & Co. for the Plaintiff.

None for the Defendant.

Shri D.V.Devkar, 1st Assistant to the Court Receiver and Shri C.R.Bhogaonkar, 2nd Assistant to Court Receiver present.

CORAM : ABHAY S.OKA, J.

DATED : 28th August, 2007.

ORAL JUDGMENT.:

1. The suit is listed under the caption of "Undefended suits for exparte decree". The suit is filed by the Plaintiff for declaration that the agreement dated 23rd January 1993 has expired and has come to an end by efflux of time on and from 31st January 1996. By the said agreement executed by and between the Plaintiff and the Defendant, the Plaintiff

leased to the Defendant the printing machines, more particularly described in Exh.A to the plaint. The Defendant agreed to pay a sum of Rs.4301/- as monthly lease rent in respect of the said printing machines for a period of 36 months. The Defendant had handed over 36 post-dated cheques in favour of the Plaintiff. The agreement provided for various default clauses. It is the case of the Plaintiff that the lease rental for the months of February and March 1993 was paid by the Defendant and the post dated cheques handed over for the subsequent months were dishonoured. A Notice dated 21st January 1995 was addressed by the Advocate for the Plaintiff to the Defendant. By the said notice the Plaintiff called upon the Defendant to pay the outstanding lease rentals and other dues. The letter was replied to by the Defendant.

2. The Plaintiff filed Summary Suit No.716 of 1995 for recovery of the outstanding lease rentals and other charges. A leave under Rule 2 of Order II of the Code of Civil Procedure 1908 was granted for filing a separate suit for recovery of possession of the printing machines. Exparte decree has been passed in the said suit. Therefore, prayer in the present suit is for declaration as aforesaid and also for a decree directing the Defendant to deliver possession of the printing machines to the Plaintiff. The Plaintiff has also

prayed for a money decree in the sum of Rs.1,16,127/- being the compensation in lieu of lease rental from February 1996 till April 1998. The lease rental for the earlier period was claimed in Suit No.716 of 1995.

3. During the pendency of the suit, by order dated 14th June 2001, the Court Receiver, High Court, Bombay was appointed as the Receiver of the printing machines. The report of the Court Receiver states that the order of this Court could not be executed as the building in which the machines were stored was found to be demolished. It is also pointed out in the report submitted by the Court Receiver that the Defendant had sold the said machines to third parties.

4. The Plaintiff is relying upon the original lease agreement dated 23rd January 1993 and the office copy of the notice dated 21st January 1995 sent by the Advocate for the Plaintiff to the Defendant. The Plaintiff has filed an affidavit of Shri Sunil H.Kedari, Manager of the Plaintiff for proving the claim in the suit. The aforesaid documents have been duly proved by the said affidavit of Shri Sunil Kedari. The claim of the Plaintiff in the suit has been duly proved by the said affidavit and the documents. In view of the report submitted by the Court Receiver, a decree for possession of the printing machines cannot be passed, as the

machines have been sold long back by the Defendant. However, prayer (b) deserves to be granted. The prayer (b) is for compensation in lieu of lease rent of Rs.4301/- per month from February 1996 till filing of this suit together with interest thereon. The Plaintiff has, however, claimed for further interest at the rate of 24% per annum. Considering the facts and circumstances of the case, further interest deserves to be granted at the rate of 12% per annum.

5. Hence suit is decreed in terms of prayer clause (b) with a modification that the interest payable on the principal amount of Rs.1,16,127/- will be at the rate of 12% per annum from the date of filing of the suit till payment or realisation.

6 The Court Receiver, High Court, Bombay stands discharged without passing account. The costs and charges of the Court Receiver shall be borne and paid by the Plaintiff.

7. Certified copy is expedited.

Judge.